

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

SUMMARY

Affordability, Real Estate Law and Mortgages

October 9, 2012

10 AM

House Room C

I. Welcome and call to order:

- Delegate Danny W. Marshall, III, *Chair*; called the meeting to order at 10:05 AM.
 - In addition to the invited speakers the following Work Group members were in attendance:
 - **Workgroup Members:** Del. Marshall, *Chair*; Senator George Barker; Mark Flynn, *Virginia Municipal League*; Robert N. Bradshaw, *Independent Insurance Agents of Virginia*; Chip Dicks, *Virginia Association of Realtors*; Brian Gordon, *Apartment and Office Building Association*; Kelly King Horne, *Homeward*; Alexander Macauley, *Citigroup*; Michael Toalson, *Home Builders Association of Virginia*; and Michele Watson, *Virginia Housing Development Authority*
 - **Staff:** Elizabeth Palen, *Executive Director of VHC*; and Laura Perillo, *VHC Legal Intern*; Iris Fuentes, *Administrative Assistant*

II. False advertising; liability of real estate brokers and salespersons; exemption (HB 724, Yancey, 2012)

- **Mr. Chip Dicks**, *Virginia Association of Realtors*; stated that there is existing law since 1995 that states if a real estate licensee uses information from a reliable source (an architect, a tax assessor, or various other professionals) in their advertisement for the sale of a home, that the real estate licensee is exempt from being sued for false advertisement. Mr. Dicks explained that in 2010 Legislative Services suggested that the five separate provisions of the code that described these exemptions be consolidated into one section of the code, and so they were consolidated. Mr. Dicks explained that the new legislation is problematic because the current language limits the exemptions to real estate agents, which according to Mr. Dicks was not the initial intent of the legislation passed in 1995.

DELEGATE JOHN A COSGROVE
DELEGATE DAVID L. BULOVA
DELEGATE ROSALYN R. DANCE
DELEGATE DANIEL W. MARSHALL, III
DELEGATE BARRY D. KNIGHT

SENATOR MAMIE E. LOCKE
SENATOR JOHN C. WATKINS
SENATOR GEORGE L. BARKER

MARK K. FLYNN
LAURA D. LAFAYETTE
T.K. SOMANATH

- **Mr. Dicks** stated that real estate licensees have dealt with several problems related to the consolidated form of the current legislation. Mr. Dicks explained that plaintiffs will allege in their pleadings that a real estate licensee is unworthy and incompetent and also allege that the real estate licensee is a criminal under the criminal false advertising statute. Mr. Dicks explained that these accusations could lead real estate licensees to have their licenses revoked or suspended.
- **Mr. Dicks** stated that he seeks to remove the availability for plaintiffs to allege that a real estate licensee is a criminal in their civil law suit and to remove the ability to claim that the real estate licensee is unworthy or incompetent.
- **Mr. Dicks** explained that lawyers who make false allegations, such as claiming that a real estate licensee who has not been criminally convicted is a criminal, face the possibility of sanctions. Mr. Dicks stated that the problem is that in a federal case from the Norfolk area, the court found that the term "criminal violation" does not mean "criminal conviction." According to Mr. Dicks, the court claimed that if the General Assembly intended the phrase "criminal violation" to mean "criminal conviction" it would have used the term "criminal conviction" instead.
- **Mr. Steven Pearson, Trial Lawyers Association;** stated that he and his constituents will not agree to Mr. Dicks request that a criminal conviction be obtained against a real estate licensee prior to plaintiffs bringing a civil claim for false advertising. Mr. Pearson stated that the code already includes sanctions for lawyers who make false statements and claims in their pleadings and that limiting attorney's abilities or preventing possible improper pleadings should not be taken on by the legislature. Mr. Pearson explained that attorneys may be sanctioned by the judiciary after making improper pleadings, but should not be prevented from stating a claim in their pleading due to a possibility of abuse.
 - **Mr. Dicks** stated that his constituents have told him that plaintiffs' lawyers are including references to criminal codes and stating that real estate licensees are unworthy and incompetent in their pleadings, but are not stating that the defendant violated anything. Mr. Dicks explained that as a result the attorneys can avoid sanctions because they did not make any real allegations. Mr. Dicks explained that attorneys and plaintiffs are then going to the local representatives in their communities and showing them the pleadings or expressing the contents of the pleadings that stated that the real estate licensees was a criminal, unworthy and incompetent. Mr. Dicks explained that this is negatively affecting the business reputation for these real estate licensees even when there is no legitimate claim or allegation asserted.
- **Mr. Dicks** explained that there are three problems that he sees with the current legislation. First, Mr. Dicks wants to make sure that the immunity described above is not limited to real estate agency

but agency law in general. Second, Mr. Dicks wants to determine what exactly is a cause of action for which sue real estate licensees may be sued. Third, Mr. Dicks wants the plaintiffs' lawyers in these types of suits to be prohibited from alleging a criminal offense of one of the other offenses until they claim damages as a result of the particular criminal offense they are alleging. Mr. Dicks stated that on his third objective he and Mr. Pearson disagree.

- **Mr. Pearson** clarified that he and Mr. Dicks have only spoken about the false advertisement claims, not criminal offenses in general. Mr. Pearson stated that he and Mr. Dicks agree as to Mr. Dicks first two observations of the existing law.
- **Mr. Pearson** stated that he objects to Mr. Dicks' third point because nothing else in the Code of Virginia includes limitations or explicit requirements for what an attorney can or must put in their pleadings. Mr. Pearson stated that nothing else in the code requires lawyers to plead for any specific request for relief. Mr. Pearson explained that if you plead a certain fact, you may be entitled to relief in a variety of different ways. Mr. Pearson explained that pleadings are privileged and that limiting what an attorney can say in a pleading is unprecedented. Mr. Pearson explained that an attorney can state in pleadings that a real estate licensee committed tortious interference with client's contracts due to misleading advertisements. Mr. Pearson stated that when you try to force words on paper into conclusions, you are telling trial lawyers how to think and the code cannot do that.
- **Mr. Dicks** stated that though he and Mr. Pearson have gone through six separate redrafts of the bill and they have been unable to come to a consensus thus far.
 - **Mr. Pearson** stated that he does not think the Virginia Housing Commission is the proper venue for this bill to be discussed.
 - **Mr. Dicks** stated that he agrees that the bill should be discussed in the Courts Commission.
- **Del. Marshall** stated that he will take Mr. Dicks and Mr. Pearson's suggestions and request that the issue be moved to the Courts of Justice Committee.

III. Hotel/Motel Extended Stay language (SB 35, Locke, 2012) (draft)

- **Ms. Christy Marra**, *Poverty Law Center*; stated that currently many impoverished people throughout the Commonwealth are living in hotels and motels for extended periods of time. Ms. Marra explained that many of these people pay by the week and stay there for weeks, months and in some cases even years. Ms. Marra stated that as a result of these extended stay guests, hotel and motel owners are put in a situation where they become quasi-landlords, despite being innkeepers.
- **Mr. Chip Dicks**, *Virginia Association of Realtors*; explained that despite proposed legislation regarding this issue, the hotel and motel industry (collectively, "hotels") has problems regarding extended stay guests. Mr. Dicks explained that under the current law, hotels are covered under the Innkeeper laws until a guest has resided in their establishment for 30 days, after which the hotels are controlled by the

Residential Landlord Tenant laws. Mr. Dicks explained the problems with this current procedure:

- **Mr. Dicks** stated that under the landlord tenant laws, hotels are required to go through a court process in order to evict a tenant and that self-help eviction (i.e., changing the locks on the door to the hotel room where the guest has not paid) is unavailable to the hotels after the guest has been residing at the hotel for more than 30 days.
- **Mr. Dicks** stated that Ms. Christy Marra raised some concerns with the current law: including that boarding houses could claim to be hotels in order to evict residents without going through the court processes.
- **Mr. Dicks** stated that another concern is that hotels will force their extended stay guests to move from one hotel room to another room every 30 days, or ask their extended stay guests to stay at another establishment on their 30th night, to avoid falling under the landlord tenant laws.
- **Mr. Dicks** stated that Mr. R. L. Dunn, an owner of a hotel that is used by extended stay guests, stated that he does not do background checks on and does not require upfront security deposits from his extended stay residents. (See Virginia Housing Commission's Affordability, Real Estate Law and Mortgages Workgroup meeting on May 14, 2012). Mr. Dicks stated that if the hotels were required to go through the courts in order to evict a tenant, they could not afford to provide housing to their clients; because they would need to collect a security deposit and do a background check.
 - **Ms. Marra** added that Mr. Dunn is running a transitional housing business and that the Commonwealth as well as her constituents have an interest in allowing Mr. Dunn's business (and businesses similar to Mr. Dunn's) to continue to operate.
- **Ms. Marra** stated that some hotels are changing the locks on tenants who have been staying with them for months, are keeping the tenant's possessions, and are making these tenant's homeless. Ms. Marra stated that under the current law the extended stay guests have no protection: there is no required notice period for eviction and there is no standard of reasonable reasons for eviction. Ms. Marra stated that the Commonwealth has an interest in helping extended stay guests from unfair treatment in order to prevent homelessness.
- **Senator George Barker** clarified that Mr. Dicks and Ms. Marra are attempting to balance the need for these extended stay hotels, while protecting the guests and the hotel owners from being treated unfairly.
- **Mr. Dicks** stated that he and Ms. Marra have been drafting a bill that they both can agree on and that would address their diverse concerns. Mr. Dicks referred to their most recent draft (included in "Materials," entitled "Proposed Legislation to Exempt Hotel/Motel Guests from VRLTA"). Mr. Dicks stated that Ms. Marra and he agree on everything in the bill except for section iv on page 2. Mr. Dicks stated that the draft of the bill shows Ms. Marra's strikeout to section iv. Mr. Dicks stated that he does not agree with the strikeout, but that he, Ms. Marra and Mr. Dunn are attempting to come up with a draft that addresses all of their collective concerns.

- **Mr. Marra** stated that she and Mr. Dicks agree hotels' obligations as landlords should not "kick in" until the guest has been staying at the hotel for more than 30 days, but less than 12 months. Ms. Marra stated that perhaps after 4 or 5 months, these obligations could start.
- **Mr. Mark Flynn**, *Virginia Municipal League*; asked what "duly licensed" means in the draft.
 - **Mr. Dicks** stated that "duly licensed" collectively means all of the licenses that a hotel needs to run: licenses from the locality, from the zoning board, from the ABC board, etc.
 - **Mr. Flynn** suggested that Ms. Marra and Mr. Dicks define "duly licensed" in the redraft.
- **Mr. Flynn** suggested that Ms. Marra and Mr. Dicks include a test and/or definition for what constitutes a "domiciliary residence" in their redraft.
 - **Ms. Marra** stated that she thinks this test would be better for the courts to develop and that asking hotels to get involved in that test would be ineffective. Ms. Marra stated this would have to be more of a case by case assessment.
 - **Mr. Dicks** stated that it would not be efficient for hotels to have to determine whether every guest they have in their hotel had to prove their domicile.
 - **Mr. Flynn** stated that currently hotels look at guests' licenses and that asking them to confirm each guests' residence would not be too burdensome.
 - **Mr. Dicks** stated that hotels do not make copies of the licenses or use services to confirm whether a person's address is their legal domicile.
- **Del. Marshall** asked whether the draft could include the size of the unit as a means of determining whether the landlord tenant laws or the innkeeper laws apply.
 - **Ms. Marra** stated that she and Mr. Dicks have considered implementing a unit size-based test. Ms. Marra stated that they have also considered a unit cost-based test.
- **Mr. Michael Toalson**, *Home Builders Association of Virginia*; asked whether the hotels are using self-help eviction.
 - **Ms. Marra** stated that some hotels are using self-help eviction despite the 30 day issue. Ms. Marra stated that she thinks everyone will "be on the same page" if the bill elongates the period during which hotels could use self-help. Ms. Marra stated that unless the self-help period is elongated, hotels are not going to want to rent rooms to people without a security deposit for fear that they will have to bring a legal action in order to evict them.
- **Ms. Kelly King Horne**, *Homeward*; stated that many people exiting homelessness have legal issues that make them not necessarily the best candidates for normal landlord tenant relationships. Ms. Horne asked whether Ms. Marra or Mr. Dicks think their version of the bill will affect a person's ability to use a hotel as a legal residence.
 - **Mr. Dicks** stated that transitional folks with bad records and bad credit are included in section iv of their bill. Mr. Dicks stated that there are a lot of

- zoning issues regarding using a hotel as a legal residence. Mr. Dicks stated that he and Ms. Marra do not want to allow hotels to find a way out of being landlords by moving people into different rooms or requiring them to leave for a night prior to the landlord obligations kicking in. Mr. Dicks stated that they are concerned that extended stay guest may not know their own rights.
- **Ms. Marra** stated that it is a difficult task to draft this bill because they do not want to make extended stay hotels inoperable and they also do not want to control others' businesses.
 - **Mr. Flynn** asked whether a hotel that is being used in part as a boarding house and in part as a hotel be included in section iv.
 - **Ms. Marra** stated that they are attempting to draft the bill clearly enough that people will be able to clarify between a boarding house and a hotel. Ms. Marra stated that the hybrid situations that Mr. Flynn references are going to be difficult to address, but that ultimately she wants those hybrid businesses to be included in section iv.
 - **Del. Marshall** stated that this appears to be a work in progress.
 - **Mr. Dicks** agreed and stated that he and Ms. Marra want to leave the legal domicile and the duly licensed portion as they are, but will add a section v.
 - **Del. Marshall** stated that this issue definitely can carry some unintended consequences regarding homelessness and derelict structures. Del. Marshall stated that he is confident that Mr. Dicks and Ms. Marra will address these concerns in their redraft.

IV. Rental Inspections (HB 566, Marshall, D., 2012)

- **Chip Dicks**, *Virginia Association of Realtors*; stated that he has been working on this issue with Fairfax County for a little less than five years and that he is happy to say that this particular issue has been resolved. Mr. Dicks formally requested that Del. Marshall withdraw the proposed legislation.
- **Del. Marshall acquiesced.**

V. Public comment

- **Del. Marshall** opened the floor for public comment.
- **Mr. Toalson** invited the members of the commission and all other interested persons to attend Rally for Homeownership on Thursday October 11 at 12:00 at Richmond CenterStage 601 E. Grace St.; back lot between 6th and 7th streets.

VI. Adjourn

- Hearing no other comments, Del. Marshall adjourned the meeting at 11:15 AM.